STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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January 6, 1995

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M. Street, NW
Washington, D.C. 20554

Re: In the Matter of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers - CC Docket No. 94-129

Dear Secretary Caton:

Enclosed please find an original and eleven copies of the Comments of the New York State Department of Public Service in the above-referenced proceeding.

Very truly yours,

Mary E. Burgess /ay

Mary E. Burgess
Assistant Counsel

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers	)))	CC Docket No. 94-129

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Comments of
New York State Department of Public Service

The New York Department of Public Service NYDPS hereby submits its comments in response to the Notice of Proposed Rulemaking (NPRM) in the above-referenced proceeding. The Commission proposes to amend its regulations to protect consumers from unauthorized switching of their long distance carriers and to ensure that consumers are able to make informed decisions regarding their long distance carriers.

In the NPRM, the Commission proposes that its letters of agency (LOA) requirements as stated in the Allocation Order and the PIC Verification Order be restated in one standard rule requiring clear and unambiguous language that confirms: (1) the customer's billing name and address and each telephone number covered by the primary interexchange carrier (PIC) change order; (2) the customer's decision to replace his or her current PIC with the interexchange carrier (IXC) soliciting the LOA; (3) the customer's designation of the IXC to act as the customer's agent for the PIC change; (4) the customer's understanding that only one IXC may be designated as the customer's PIC; and (5) the customer's understanding that any PIC selection that he or she makes may lead to a PIC change charge for the customer. The

Commission also seeks comment on whether the customer's telephone number should be preprinted on the LOA and whether the Commission should prescribe specific language for the LOA. In addition, the Commission proposes that LOAs consist of separate documents that contain no inducements such as checks or contest entry forms and that "negative options" be prohibited. Finally, the Commission asks whether it should prohibit inducements from being included in the same envelope as the LOA.

The NYDPS strongly supports the proposed rule restating the LOA requirements and requiring that LOAs be written in clear and unambiguous language. Consumer complaints received in New York reveal problems similar to those discussed in the NPRM -- consumers often do not realize that the form they are signing is in fact a request to change their PIC. People believe they are registering to win a free trip or are confused by the arrival of an unsolicited check and either do not see the very small print or are unable to read the statement identifying the entry form or the check as an LOA. Similarly, we support the proposed prohibition of "negative options" which require consumers to take action in order to avoid having their PIC changed automatically. Such deceptive practices used by some IXCs to lure unsuspecting consumers from the PIC of their choice, commonly referred to as "slamming", must be stopped. Slamming not only results in angry consumers but also reflects poorly on regulators and the industry by diminishing consumers' perceptions of competition. Requiring that LOAs consist of separate documents and not include any inducements will help to clarify for consumers exactly what is being proposed by the soliciting IXC. However, we agree with the Commission that physically separating the LOA from the inducement within the same envelope is sufficient. As long as the documents are separate and the message is not misleading, deceptive, or ambiguous (as is often the case currently), consumers should be able to judge how or whether to respond to the marketing and promotional materials.[1]

NYDPS does not believe it is necessary to require the customer's phone number to be preprinted on the LOA or to prescribe specific language for the LOA. We suggest, however, that consumers be required to confirm on the form the telephone number(s) for which a PIC change is being requested. To address the concerns regarding the language of the LOA, it may be helpful to require the IXCs to submit their proposed LOAs to the Commission for review to verify that the language complies with the new requirements.

In the NPRM, the Commission seeks comments on other unauthorized conversion issues, specifically: (1) whether LOAs should contain only the name of the IXC that actually sets the rates for the consumer or whether it is possible to include other carriers' names without misleading or confusing consumers; (2) whether business and residential consumers should be treated differently with respect to the LOA requirements; (3) whether

[1] Over time, alternative approaches to protecting consumers from unauthorized switching of carriers may need to be explored, as more competitors are providing telecommunications services.

consumers should be absolved of the liability for any payments to their previous IXC for optional calling plans after unauthorized conversions occur; (4) whether and to what extent consumers should be liable for the charges billed by an unauthorized PIC; (5) whether rules should be adopted to govern bilingual or non-English language LOAs; and (6) whether 800 numbers should be used only for verification purposes of a PIC change.

NYDPS believes that the LOA should include only the name of the reseller or rate setting company with whom the consumer must contract, because this will minimize the likelihood of customers' being misled or deceived by extraneous information in the LOA. We would oppose any reseller's trading on or using the underlying carrier's name in an attempt to convey to consumers that the reseller's rates and services are exactly the same as the underlying provider when in fact that may not be the case. If the Commission decides to allow the name of any entity other than the ratesetting company or the company with whom the consumer is contracting for service to appear in the LOA, then the responsibilities and roles of such entity and its relationship to the consumer should be clearly defined.

As for treating business and residential LOAs differently, primarily because LOA forms sent to businesses might not be received and processed by the person authorized to make such changes, it should be the responsibility of the soliciting IXC to determine that it has the proper authorization for both business and residential consumers. If there is no verification that the authorization was granted by the proper individual, any subsequent challenges should result in the PIC change being classified as unauthorized, regardless of whether the account is business or residential.

We believe that consumers should be absolved of any payments to their original PIC for optional calling plans which are not discontinued at the time there is an unauthorized PIC change. In such cases, the consumer's account with the original PIC should be credited for such charges and the unauthorized PIC should be billed by the original PIC for the amount credited to the consumer's account.

It is the position of NYDPS that consumers should not be liable for any charges billed by an unauthorized PIC. To require consumers to pay the charges to the unauthorized PIC is tantamount to rewarding the unauthorized PIC for its deceptive practices, thus creating an incentive for dishonest IXCs to take their chances at getting caught since there would be no financial penalty. The unauthorized PIC should be required to refund to consumers all charges billed during the period the unauthorized PIC was in effect.

NYDPS strongly supports the adoption of rules governing bilingual or non-English language LOAs. If any part of the LOA is translated, then the entire LOA should be translated. If IXCs only translate parts of the LOA while the remainder is in English, it might be assumed that this is done to deceive individuals so that they will change their PICs. Such actions are intolerable. We also support requiring a simple and descriptive caption such as the one included in the NPRM -- "An Order To Change My Long Distance Telephone Service". The phrase "Letter of Agency" is not simple, descriptive or easily understood by those unfamiliar with regulation of the telecommunications industry.

Concerning the issue of consumers calling an 800 number in response to marketing programs, to obtain information about a particular IXC and then being "encouraged" to switch to that IXC, we believe that, with the proper safeguards, an 800 number may be used for both verification and the placement of initial orders. However, any PIC changes resulting from calls to numbers which have been established to disseminate marketing information should require the same verification procedures which the Commission requires when PIC changes result from telemarketing sales. Specifically, before submitting PIC changes to the local exchange company, the IXC should be required to confirm the consumer's decision by: (1) obtaining the consumer's written authorization; (2) obtaining the consumer's electronic authorization by use of an 800 number; (3) obtaining verification authorization of the consumer's oral from an independent third party; (4) sending an information package, including a prepaid, returnable postcard, within three days of the consumer's request for a PIC change, and waiting 14 days before submitting the consumer's order to the LEC, so that the consumer has sufficient time to return the postcard denying, cancelling, or confirming the change order.

Thus, NYDPS supports the Commission's endeavor in this area and believes that adoption of the proposed rules will serve to curtail unauthorized changes of consumers' long distance carriers without impinging upon competition to the detriment of consumers.

Respectfully submitted,

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Of Counsel
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Dated: January 6, 1995
Albany, New York